SUPREME COURT OF THE UNITED STATES.

No. 151.

THE UNITED STATES, PLAINTIFF,

vs.

HENRY WELLS.

ON A CERTIFICATE OF DIVISION OF OPINION FROM THE CIRCUIT COURT UNITED STATES FOR MICHIGAN.

UNITED STATES OF AMERICA, *District of Michigan:*

At a session of the circuit court of the United States for the seventh circuit and district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit, on Tuesday, the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and forty-four.

Present: Honorable John McLean, associate justice of the Supreme Court of the United States, and honorable Ross Wilkins, district judge.

In the case of

The UNITED STATES OF AMERICA
vs.
HENRY WELLS.

State of pleadings.

This is an action of debt for the recovery of the penalty under the nineteenth and twenty-fourth sections of the act entitled "*An act to reduce into one the several acts establishing and regulating the Post Office Department*," approved March 3, 1825.

To this the defendant pleaded not guilty.

Upon the trial, the jury empanelled and sworn, found the following facts in the form of a special verdict, viz:

"That the above named defendant did, on the tenth day of October, in the year of our Lord one thousand eight hundred and forty-four, enter upon the business of carrying letters and packages out of the mails of the United States of America, between the city of Detroit and the village of Marshall, for all persons who would pay him for the same, and in pursuance thereof, did establish offices in the city of Detroit, and the village of Marshall; and that the said defendant has ever since daily been employed in said business, transmitting said letters and packages by

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messengers, who took passage on the railroad cars running between the city of Detroit and Marshall, and which cars carried the United States mail.

"And the jurors aforesaid further find, that the said letters so carried by the messengers of said defendant, for him, did not relate to any part of the cargo of said cars.

"And the jurors aforesaid do further find, that the said railroad and cars were owned by the State of Michigan, and that said cars performed daily trips from Detroit to Marshall aforesaid, on said road, which was declared by act of Congress to be a post road of the United States; that the said defendant is not a citizen of the State of Michigan, nor does he own, nor has he any interest in the said road or cars.

"That while engaged in the conveyance of letters as aforesaid, the said defendant and his agents paid the said State of Michigan the usual fare paid by passengers over said road, for carrying him and them between the city of Detroit and the village of Marshall.

"That the said State of Michigan was not engaged in the business, and did not participate in the profits of conveying the letters as aforesaid, but was notified by public advertisements of the said defendant, and by the agent of the Post Office Department of the United States, that the said defendant and his agents were employed in the said business of carrying letters as aforesaid.

"And the jurors aforesaid do further find, that at the time aforesaid, there was a contract between the Postmaster General of the United States and the said State of Michigan, for the transportation of the mails of the United States between the said city of Detroit and the village of Marshall, in the same cars which conveyed the messengers of said defendant with the letters aforesaid.

"And the jurors do further find and present, as part of their special verdict, certain acts of the legislature of the State of Michigan relating to the said railroad.

"If, upon the facts aforesaid, the court should be of opinion that the plaintiffs are entitled to recover, then the jurors aforesaid find for the plaintiffs one hundred dollars, being the aggregate amount of penalties incurred by the said defendant, under the provisions of the act of Congress passed the third day of March, 1825, entitled '*An act to reduce into one the several acts establishing and regulating the Post Office Department.*'

"But if the court should decide that the plaintiffs are not entitled to recover, then the jurors aforesaid find for the defendant."

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George C. Bates, the district attorney of the United States, upon the finding of the special verdict of the jury in this cause, moved the court for judgment, which motion was resisted by Theodore Romeyn and

Henry N. Walker, the counsel for the defendant, on the following grounds:

First. That the said defendant is not liable under the 19th section of said act of Congress, because he was not the owner, nor in charge of the said railroad or cars.

Second. That the said defendant is not liable under the 24th section of said act of Congress as an accessary for procuring, advising, or assisting in the doing or perpetration of any of the acts or crimes forbidden, *because* the State of Michigan owned said road and cars, and had charge of the same, and managed and run said cars, and said defendant could not be guilty unless there was a principal, who was also guilty and liable to the penalty under the 19th section, and said State is not guilty or liable, because—

1. As a sovereign State, it cannot be guilty of said acts and crimes forbidden by said law.

2. Because neither the said State, nor the cars owned by said State, conveyed the said letters and packages as such, but only carried the messengers of said defendant as passengers over said road.

3. Because the said State, in the management and conducting of said railroad and cars, held itself out to the community as a common carrier both of passengers and merchandize, and acted as such, and by means of said railroad and cars, was actually engaged in the business of transporting for hire, merchandize, and passengers with their baggage, and was bound to carry, under the circumstances of this case, the messengers of said defendant.

Third. That the said letters and packages were conveyed by special messengers within the meaning of the proviso to the 19th section of said act of Congress.

Fourth. That the restrictions contained in the nineteenth section of said act of Congress are unconstitutional and void.

Upon all these questions the opinions of the said judges were opposed. And it is ordered and directed that this cause, with said points and the facts found by the jury in the special verdict, be certified to the Supreme Court of the United States, in pursuance of the act of Congress in such case made and provided.

UNITED STATES OF AMERICA, *District of Michigan, to wit:*

I, John Winder, clerk of the circuit court of the United States for the district of Michigan, do hereby certify the foregoing to be a true copy from the minutes.

Given under my hand and the seal of said court, at Detroit, this 21st [SEAL.] day of December, one thousand eight hundred and forty-four.

JNO. WINDER, *Clerk.*

Filed, Dec. , 1844.